## UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

	ORDER	
Defendant.	)	
CHARLES WALKER,	)	
	)	JUDGE HAYNES
<b>v.</b>	)	No. 3:09-1208
	)	
Plaintiff,	)	
	)	:
TOMMY RAY WARREN,	)	

Before the Court is a *pro se* prisoner complaint filed under 42 U.S.C. § 1983. Plaintiff, an inmate at the Lois M. DeBerry Special Needs Facility (DeBerry) in Nashville, has submitted an application to proceed *in forma pauperis*.

From a review of his application, it appears that Plaintiff is unable to pay the filing fee.

Therefore, the Clerk will **FILE** the complaint *in forma pauperis*. 28 U.S.C. §§ 1915(a), (b)(4).

Plaintiff is herewith assessed the three hundred fifty dollars (\$350.00) civil filing fee. Pursuant to 28 U.S.C. §§ 1915(b)(1)(A) and (B), the custodian of Plaintiff's inmate trust fund account at the institution where he now resides is directed to submit to the Clerk of Court, as an initial payment, whichever is greater:

- (a) twenty percent (20%) of the average monthly deposits to Plaintiff's inmate trust fund account; or
- (b) twenty percent (20%) of the average monthly balance in Plaintiff's inmate trust fund account for the prior six (6) months.

Thereafter, the custodian shall submit twenty percent (20%) of Plaintiff's preceding monthly income, or income credited to Plaintiff's inmate trust fund account for the preceding month, but only when such monthly income exceeds ten dollars (\$10.00). 28 U.S.C. § 1915(b)(2). Such payments shall continue until the \$350.00 filing fee has been paid in full to the Clerk of Court. *Id*.

As provided in the accompanying memorandum, the complaint is **DISMISSED** for failure

to state a claim under federal law. 28 U.S.C. §§ 1915(e)(2)(B)(ii); 1915A(b)(1). Because an appeal

from the judgment rendered herein would **NOT** be taken in good faith, Plaintiff is **NOT** certified to

pursue an appeal in forma pauperis. 28 U.S.C. § 1915(a)(3). Nevertheless, should Plaintiff file a

notice of appeal, he either must pay the Clerk of Court the full four hundred fifty-five dollar

(\$455.00) appellate filing fee, or submit a new application to proceed in forma pauperis with a

certified copy of his inmate trust account statement for the six (6) month period preceding the filing

of his notice of appeal. 28 U.S.C. §§ 1915(a)(1)-(a)(2).

The Clerk is instructed to forward a copy of this Order to the Warden at DeBerry to ensure

that the custodian of Plaintiff's inmate trust fund account complies with the portion of the Prison

Litigation Reform Act that pertains to the payment of filing fees. Should Plaintiff be transferred

from his present place of confinement, the custodian of his inmate trust fund account shall ensure

that a copy of this Order follows Plaintiff to his new place of confinement. All payments made

pursuant to this Order shall be forwarded to the Clerk of Court for the Middle District of Tennessee.

Entry of this Order shall constitute the judgment in this action.

It is so **ORDERED**.

ENTERED this the \_/o day May, 2010.

United States District Judge

2